Global Trends in the Right to be Forgotten

Columbia Global Freedom of Expression Webinar

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Anderson Javiel Dirocie De León: Hello everyone on behalf of Columbia Global Free Expression. I am pleased to welcome you for the second webinar of this series, as part of the launch of the French language version of the global jurisprudence database. I am Anderson Javiel Dirocie De León, Dominican lawyer specializing in international law. public and human rights.

And in my capacity as legal and program advisor for Columbia Global of Expression, I have the great honor of opening this webinar on the right to be forgotten that we are organizing in collaboration with Article Nineteen of Senegal and with the support from panel experts. This is the 4th webinar in the series,you can consult the agenda on our website. I would like to take this opportunity to invite you to the next one which will take place on March 25 and will focus on hate speech.

Global Freedom of Expression is a Columbia University initiative established in 2014 by Lee C. Bollinger, then president of the university, to promote the highest international standards in judicial protection, freedom of expression and freedom of the press on a global scale. Our flagship project is the Global Free Speech Case Law Database, which hosts over two thousand two hundred English-language case analyses, judicial decisions from one hundred and thirty countries, including all case law relating to the freedom of expression of the Inter-American Court of Human Rights and the African Court on

Human and Peoples' Rights, and the Grand Chamber of the European Court of Human Rights. The French version already has more than five cases. Is fully searchable and contains information on a wide range of free expression issues around the world. Additionally, new cases will be added every month.

The database also contains translations of orders on topics such as Internet access shutdowns and, in international law, hate speech, the right to be forgotten, as well as regional courts such as the Inter-American Court, the European Court and the African Court of Human and Peoples' Rights.

These documents from the Special Collection on the Global Database on Freedom of Expression. provide a global perspective of some of the most important legal decisions adopted by national and international courts on relevant topics concerning freedom of expression.

The French database and this series of webinars are made possible thanks to the support of UNESCO's Multi-Donor Programme on Freedom of Expression and Safety of Journalists (MDP), and the Cyrilla Collaborative, with funding from The Centre for Intellectual Property and Information Technology Law (CIPIT) at Strathmore University, Nairobi, Kenya.

I would therefore like to warmly thank them for their support. This webinar will last one hour, it is open to the public and we expect participants from all over the world. The conversation will be streamed live on Columbia's Global Freedom of Expression YouTube channel. and we will leave time at the end for participants to ask questions or provide comments if they wish.

Allow me to reiterate my warm welcome, and hand over to Master Basil Ader who will do us the honor of moderating this panel. Thank you and you have the floor.

Basil Ader: Thank you very much, dear colleague, for inviting me to participate in this meeting on a very important legal issue in terms of freedom of expression which is the right to be forgotten, we are going to have two speakers who will explain what the right is applicable each in their country.

First of all, Mr. Ramiro Alvarez Ugarte, who is vice director of the Center for Studies on Freedom of Expression and Access to Information in Argentina, and who is the author of a document which takes stock of the jurisprudence on this question, called “Our past, does it have a right to be forgotten via the Internet”, He will have the floor for a little less than twenty minutes, and then we will listen to Mr. Frédéric Gras, who is a lawyer at the Paris bar, contributor to the magazine Légipresse, of which I forgot to say that I am the editorial director, and who is one of the greatest specialists in press law in Paris.

There you go, I now give the floor to Mr. Alvarez Ugarte

Ramiro Alvarez Ugarte: Thank you, Basile, it's a pleasure to be here. I'm really close to the project for a bunch of reasons. I am close to Columbia because I studied there for my master's degree and my doctoral degree, and I have been part of the global field of expression projects for a long time now. I was very happy when Catalina asked me a couple of years ago to coordinate a few webinars on the issue of violence against journalists. And I also was happy to work on the paper that I will discuss today.

The right to be forgotten is a is a very important and actually relevant issue in play of expression jurisprudence around the world. CELE, which is where I work, a research center, we have studied this for a long time. One of the most important precedents in Latin America comes from the Argentina Supreme Court, and the paper that I will discuss is actually a good example of the kind of useful information, because it is truly global in the scope and reach.

When I was given the task to review the work of colleagues who went through the database in order to gather all the relevant case law, I was surprised to see how many cases about the right to be forgotten existed there. So, my work was try to make sense of all the information, and try to put it in context, and to understand where this issue comes from, where it's going, and what are the risks, I would say, implied by strong recognition of the right to be forgotten, for freedom of expression purposes.

The first thing I would say in this regard is that clearly the right to be forgotten is something that comes out of the Internet. It is is a true Internet child. The right to be forgotten emerges in the context of the Internet as a technology that changes the way we access information, and that produces new sets of problems and issues. In this case, it has to do with the issue of permanence of information on the Internet, and easy access to the Internet. This is a new problem.

We have actually an open call for papers at CELE in which we try to address some issues, issue of speed, scope, neutrality. The issue of permanence is certainly one of the new things that comes with the Internet. Before the Internet, information would stay in books in newspapers, but accessing them was difficult, they would be hidden in the stacks of all libraries full of dust. This is no longer the case, when we produce information and we upload it to the Internet, the information somehow acquires a feature, which is it that becomes permanent, it becomes, in a way, forever. And, as humans, we aren't used to that, so it's a new problem.

What we've seen around the world, especially after the Costa Rica decision, which is, of course, the leading case on the right to be forgotten, is that two general approaches has been developing at the same time.

One of them makes a strong claim about the right to be forgotten, which is somewhat strange because we don't have a right to be forgotten in our social world. We might be remembered if we do good or bad things, we might be forgotten, but we didn't have -- we will have never spoken about til now -- a right to be forgotten. You would like to be forgotten if you did something wrong, and I guess if you did something right, you would

like to be remembered, but we never spoke about being forgotten or being remembered, as implying a right. So, in a way, it's a strange form of talking about the harm that is produced by the permanence of information on the Internet.

The other approach is, I would say narrower, and it has to do with de-indexation as an appropriate remedy for certain cases. This approach, in a way, makes a less or a weaker claim. It speaks in terms of procedure, and in terms of remedies to certain harms, which I think is a better approach.

In any case, when we talk about the right to be forgotten, we're usually talking about de-indexation. But there are differences between both approaches, especially in terms of how strongly we talk about this issue, and I believe these differences are important.

What the report has done is to take the Global Freedom of Expression database, and analyze all the cases that have been documented in the database about the so-called right to be forgotten. I would say that the paper identifies a few challenges in terms of how the right to be forgotten is recognized by courts around the world.

The first thing is that, generally speaking, the right to be forgotten, as recognized by courts around the world, has a weak statutory background. Generally speaking, legislatures around the world, which are the ones that produce the laws that govern our lives in our communities, have not really passed right to be forgotten laws. This right has emerged, as I said before, as a remedy to a special kind of harm. It is a court produced right, or court recognized right. This is problematic from a freedom of expression standpoint, because in most international human rights systems, the first step to assess the legitimacy of the restriction of freedom of expression establishes that restrictions must be established by law in a material and formal sense. So, this is the first challenge.

One of the ways in which this challenge has been addressed is that the many courts around... not all courts around the world, but many courts... that have embraced or considered the right to be forgotten, have granted these rights via data protection schemes. It has considered the information involved in a right to be forgotten claim as involving a claim about the right to control personal data, or the right to privacy, but generally through the procedural tools included in data protection laws. This is somewhat problematic, it is not the best way to use data protection laws, or grounding this kind of right... or as I prefer to consider, this kind of remedy... because data protection laws generally have not been drafted or produced to deal with these issues.

Data protection laws have been produced to deal with other interests, which have to do with other issues, and generally, because of that, recent data protection laws and regimes do not include any structured pattern of consideration of the freedom of expression interest involved. This is a problem. But, because it comes from courts and not from legislatures, courts have found this shortcut of grounding these remedies in data protection laws.

There is another problem that I see in the trends that the paper discusses, which is that, because it hasn't been regulated, it has encouraged the kind of litigation that looks a lot like SLAPPs, Strategic Litigation Against Public Participation. Not in all cases, of course, because there have been the case in which there seems to be a legitimate claim on the right to be forgotten, but in a lot of other areas.

Particularly in Argentina, and to an extent in Colombia, we have seen the evocation of the right to be forgotten in a way that is really similarly to SLAPPs, in which the purpose seems to be not so much actually taking down information, but rather creating, through litigation, that kind of pressure on media outlets, which is another ... the third challenge, I would mention. This usage is threats to freedom of the press, which media companies, newspapers and so on are often the main defendants in right to be forgotten cases.

The other thing that I would mention is that, in some cases that are discussed in the paper, we see a very important analysis as follows: courts should consider the availability of less restrictive remedies than strong right to be forgotten claims, or strong de-indexation. It is easy to imagine how other remedies could have less restrictive effects on freedom of expression. All these challenges come from a very broad and general take on the case law.

We see different trends. For instance, in Latin America, courts have been mostly not very friendly to right to be forgotten claims. A lot of reasons for that. Some authors have pointed towards past human rights abuses, and the development of a juridical idea of memory and the right to truth, as one reason why Latin American courts have been really unfriendly to right to be forgotten claims. We see more more friendliness towards right to be forgotten in Europe, but this is not total, we see at different trends within Europe as well. We see more friendliness towards right to be forgotten cleansing in Asia.

So, there are different trends around the world, but we can also see some degree of cross pollenization between courts, in which some precedents are really taking us. Very important, in other jurisdictions, because [inaudible] is, of course, the main case, but we have seen some degree of cross pollenization of right to be forgotten cases in Latin America, in which courts from different countries cite each other, which is, we believe, an interesting development.

Under the right to be forgotten, I would say, besides the challenges that I have already mentioned because of its emergence, I see three features that are important from the point of view of freedom of expression law around the world.

One of them is that the right to be forgotten has contributed to weaken the strong non-liability rules that control the intermediary companies on the Internet since the 2000s until now. It's not the only reason why this rule has been weakened across with the passing of time, but it is one of the reasons.

The other concern on the right to be forgotten claims, that has been taken up by some courts, is the need to include publishers, which is very important when the issues being involved here are of the public interest and include as defendants, newspapers and media companies.

Another thing, that is clear, is that we see in the right to be forgotten claims, I would say, a new battle in the jurisdictional wars of the Internet. So, these that have happened for a long time, happen again with the right to be forgotten.

I will close with the following, which is the privacy claims involved in the right to be forgotten are of course very important, but we have seen some cases, that the paper discusses, in which there has been a really good balancing exercise between privacy claims and free of expression claims. This needs to be balanced, of course, on a case by case basis. This is what most constitutional law around the world recommends, what human rights law standards around the world call for, and some cases have been very good at doing this. Some courts have been very, very good at doing this.

The reputation and honor involved in right to be forgotten cases has also been discussed properly by some courts. The [inaudible] case in Europe is perhaps one of the of the best of the best examples of this approach.

Then the main problem that we see, and I think it is where courts should strive to strike the right balance, and generally against right to be forgotten claims, is when public figures are involved, or when the issue being discussed is of the public interest. This is, I would say, the riskier scenario, from the freedom of expression point of view, of right to be forgotten claims, and this is where right to be forgotten claims, and de-indexation as a remedy, generally should be narrower and more restrictive.

The alternative measures discussed before, such as the possibility of annotating original information, such as unlinking certain names from certain pieces of information, this should also be considered in the context of adjudicating these kinds of controversies. This is, I think, where global case law is moving, where it's going. This is, of course, a prediction, and is only based on what we see until now. This paper is at least a year old, so I'm sure there are new cases around. I think [inaudible] especially has just told me last week, new cases that have been included in the database and are not in the paper, but I have seen them.

Clearly, I think this is where it's going, to narrower right to be forgotten claims, to narrower de-indexation measures and alternative measures, and to striking the right balance between competing claims, which is what lies behind right to be forgotten cases. Thank you very much.

Basile Ader: Thank you very much Ramiro. It was very clear. I think that the Argentinian issues are very close to the issues we encounter in French law. But Mr. Frédéric Gras will explain this to us now.

Frédéric Gras: Thank you Basil. What we can say regarding the anonymization of court decisions is that the principle of publicity of justice and the principle of exemplary sentencing has always been prevalent in law, in any case in French rights. To this point, in a decision of the Paris Court of Appeal in 2014, it was said, I quote, “the right to be forgotten has no legal recognition and cannot prevail over the right of the public to exhaustive and objective information”. We also find such a principle in a judgment of the European Court of Human Rights of June 28 2018, where it was considered that there was no reason to anonymize articles which were online, precisely because the judges, unanimously, had considered that the press was not to be affected by such measures. This was not the solution recently adopted by the large chamber of the European Court of Human Rights, which, in a judgment which is not unanimous, 12-5, considered that there was a right to forgotten for a doctor who had committed a car accident twenty years previously. In this case, I invite students to read in particular the dissenting opinion as well as the concurring opinion, firstly because they are brief, and secondly because they are very well argued.

So, what are the causes of the anonymization of court decisions in France? What questions do they raise? And then what is the practice of the courts?

As far as the cause is concerned, It is first of all the doctrine of what in France is called the Commission nationale de l'informatique et des libertés (CNIL), an independent administrative authority, which is a rather unique concept, and which, from the 1980s, considered that case law databases were intelligence files and that it was therefore necessary to be particularly vigilant with regard to them, but considered, at that time, since these legal databases were mainly consulted by lawyers, there was no big problem.

The problem was born, as our previous speaker recalled, via the Internet, which made this data accessible to the entire public. From there, we had a CNIL decision on November 29, 2001, by which it was considered that there was an essential right to be forgotten, for the benefit of the individuals cited in court decisions, and thus the the CNIL recommended anonymity for parties and witnesses, but not for the magistrates, because it was considered that the magistrates should appear in the decision and take responsibility for their decision.

We find this CNIL analysis in the first law on the subject, which is the Digital Republic law of October 7, 2016 which tried to reconcile the publicity of justice with the right to privacy, and thus provided that the making available of court decisions from a digital point of view must be subject to an analysis of the risk of re-identification of people.

This is the first step, in 2016. The second step is a law of March 23, 2019, which established article 111-13 of the judiciary, instructing that the first and last name of natural persons must be deleted, the parties to the lawsuit, but also any third parties to the lawsuit who are cited in the decision. The names of magistrates, the names of clerks

and the names of third parties, can also be deleted if there is a risk of harm to the security or privacy of these people or those around them.

Then there is also, in a 2019 law, a ban on predictive justice by using the names of magistrates and the names of clerks to try to compile decisions, to discover what they are likely to decide.

Another important step is a decision of the Council of State, August 19, 2022, taken on the basis of the regulatory provisions in application of the 2019 law. The Council of State affirmed that Article 6 (1) of the European Convention for the Protection of Human Rights in no way establishes a right to publicity of court decisions for third parties, and that such concealment is in conformity with the European Convention on Human Rights. So, the Council of State in 2022 established a clear principle which is that the publicity of legal proceedings does not correspond to the publicity of decisions, and does not imply the publicity of decisions, so publicity of the arguments is not publicity of the decisions.

On this, the Cour de cassation, in a decision finally published on November 3, 2023, favored continuation of the move to anonymization, and recommended additional concealments to the law, according to type of dispute, after balancing risks of invasion of private life with the necessary intelligibility of court decisions, because scholars, university professors, and lawyers, often complain that decisions are difficult to understand once the parties have been anonymized.

So, what can we do, as an observation? What questions does this anonymization of court decisions raise?

The first question that arises is, what about the principle according to which justice is rendered in the name of the French people? Justice is delivered in the name of the French people, but, ultimately, through anonymization, the French people no longer have access to the decisions in any case where the parties have taken the matter to court, and this, even though justice was implemented precisely in the name of the people, and within the framework of publicity of legal debates.

So, that's the first question. The second question is whether the referral to justice, and the resulting public trial, relates to private life. Is it an element of private life to go to court?

Then, the third point, which is also important, is to know how we understand this right to private life. We have seen that the CNIL says the right to privacy must prevail, but this right to privacy is a personal right, and so that raises the question of how can the state take over this right to privacy, and prejudge its exercise by concealing the names of parties in court decisions, since we can very well imagine that certain parties have, on the contrary, the wish to see their name associated with the court decision.

Finally, the last point and last question is that the right to privacy is not an absolute right, and it must be reconciled with the right to information and also with questions of debate of general interest, as noted by the European Court of Human Rights. by the Cour de cassation in France, and also by the Constitutional Council, which notably considered that the provisions of the major Press Law, which is the law of 1881, and, in particular, its article 35, which covered amnestied convictions, and that facts older than ten years cannot be revealed by the press. The Constitutional Council considered that such provisions were unconstitutional and must therefore be repealed.

Finally, last point, Article 85 of the GDPR, the European data protection regulation, itself provides that it does not confer an absolute right to personal data, and that journalists have the right to report a certain amount of information, even if this information uses personal data.

So, we clearly see that there is an arbitration which must take place between the right to privacy and the right to information, and that the CNIL arbitration can raise questions on a certain number of points, so, let's see what the applications are.

The applications of the anonymization of court decisions raise a certain number of questions. Firstly, because anonymization, it should be noted, is carried out by pseudonymization software, and this software for pseudonymization of court decisions is based on the use of artificial intelligence, and, when we talk about artificial intelligence and anonymization, it is especially the last term that should be remembered.

I'll give you an example. We recently had a judgment from the criminal chamber of the Cour de cassation, October 5, 2023, which concerned a politician, Mr. Eric Zemmour and we anonymized his name, but we also anonymized the names of the people that he cited, and who were nevertheless historical figures since it was a comment by Eric Zemmour concerning the Second World War and the attitude that Marshal Pétain may have had during the Second World War towards the Jews, and Eric Zemmour maintained that Marshal Pétain had protected the Jews. On this, he is being prosecuted for contesting crimes against humanity, and the judgment rendered by the Cour de cassation anonymizes not only the name of Eric Zemmour, but also the name of Marshal Pétain. And so, here, we clearly see that the anonymization of court decisions in no way facilitates the information for readers, and does not facilitate the intelligibility of the decisions rendered by the Cour de cassation, and also, I would say, their publicity and their role model influence, since how can we claim such influence if we suppress the name of the person who is convicted? It is a criminal sanction of exemplarity, which is surprising to say the least.

There is surprise also in other decisions which have nothing to do with the media context. An example in social security law. In social protection law, we can say that a priori it does not really concern the invasion of private life. And yet, in a number of decisions, we have deleted not only the names of natural persons, but also the names

of legal entities, that is to say companies which were affected by an adjustment in terms of social contributions, and this in the name of the fact that the company had a patronymic name, which was the name of the former directors, and therefore we find ourselves applying a principle of risk of re-identification, and therefore we delete the name of the legal entity. We also delete the address of the legal entity, and we also delete the location of the company's headquarters.

So, we can clearly see that, little by little, everything is intended to be anonymized in court decisions, and we are even getting there, since in a dispatch dated November 6, 2023, from the first president of the Cour de cassation, which had not been proposed by CnIL, that there could be considerations to remove the name of legal entities in family property law concerns.

So, we see that we delete the names of the witnesses, we delete the names of the parties, we delete the names of the legal entities, We also delete... and there we arrive, I believe, at the heart of the war... we can even manage to delete the reasons for the decision. All this being provided for by regulatory provisions, and moreover specified by Article R111-11 of the Judicial Code.

So, we can clearly see that the trend, or rather the door that we have opened to anonymization, tends to remain more and more open. This presents, in my opinion, a certain risk, particularly from the point of view of judicial records, and from the point of view of the intelligibility and accessibility of court decisions.

On this particular point, there was a fairly significant criticism, namely from university professors, notably Pierre Yves Gautier and Nathalie Blanc, both professors at the University of Paris, who noted that the decision was thereby removed by anonymizing its identity, however, removing identity from the decision is ultimately problematic, since jurisprudential law resolves trials and does not legislate, therefore anonymizing the decision means giving it the appearance of a general character. Since the person disappears, the parties to the trial disappear, and this general character is not in the nature of the court decision.

On this point, the European Court of Human Rights, and notably the concurring opinion of one of the judges in the urban case of July 2023, the grand chamber case of July 23, 2023, it was made clear that court decisions are always specific decisions, and that we must be careful not to draw general principles from a decision which must always be placed in its context, but it will be all the more difficult to place it in context if we have removed all the names of natural persons, or even the names of legal persons, or even the reasoning.

And so we can think, and I will finish, by anonymizing the court decisions, not only do we strip the decision of its identity, but we can even end up with a sort of confusion between a legislative and regulatory power, and a judicial authority, which is there only to set down the law, as was said in the 19th century. .

The judge, and the voice of the law, are not the voice of the legislator, nor of the regulatory power, and this is the reason why we may have some questions about this practice of anonymization of court decisions, which we have seen, with the impression that it is more and more important. This is what I had to say on the subject.

Basil Ader: Thank you very much, thank you, dear Frédéric. Well, the subject of anonymization is not the only concern in French law in the area of the right to be forgotten and freedom of expression, because the question is whether there is a general interest that remains attached to old information, and recognizing a right to be forgotten... Are we not allowed to rewrite? In any case?... to deny history, and that is what is fundamentally at issue.

But then, no doubt the people who are listening to us have questions to ask our two speakers, does one of you wish to ask a question?

Okay, well then I will ask the first question to Mr. Alvarez Ugarte. Have the Spanish-speaking jurisdictions, to your knowledge... which Spanish or Argentina have also set very strict rules on the anonymization of court decisions? You have the same problem in Spain or in Argentina?

Ramiro Alvarez Ugarte: Thank you, Basile.

To the best of my knowledge, in Latin America generally, the anonymization of judicial information is very restrictive. It's restricted to only a few sets of cases, cases involving family law, in which there are children involved in the cases. There are some cases in which the information on victims of certain crimes is anonymized. But, besides family law, and criminal law also in a few sets of cases, anonymization is not a standard policy.

Sometimes, anonymization is done manually, it's not done automatically, or anything of the sort, and usually, the letters of the names are used, which is very bad for actually hiding the information of the person involved.

I remember a very famous case on actually freedom of expression from a few years ago, in which the name of the case was M comma DA, which was a case involving Diego Maradona, because of paternal demand by someone. So, that's the kind of anonymization I have seen in Latin America.

But, this is probably one of the reasons that may explain this limitation, or narrowness, of the policy, is that most decisions are printed in PDFs. So, it's like the actual paper version of the decision is what is being uploaded to a database, so that makes gathering the information and processing it very difficult, and that may explain why there hasn't been a strong demand to anonymize information, because it cannot really be processed automatically, as you can do with plaintext databases.

Basile Ader : Thank you so much.

Frédéric Gras, what can you say about the position of the jurisprudence of the European community? Because, the court of justice ruled on these questions in an attempt to standardize the position of the right to be forgotten with regard to freedom of expression, no longer anonymization, simply court decisions.

But, more broadly, what is the distinction it makes between, for example, public figures and people who do not deserve to have posterity, and can claim a right to be forgotten.

Frédéric Gras: There are already two trends. There is the tendency of the Court of Justice of the European Union, who says there has to be de-indexing, there is a possibility of de-indexing. But, we are talking about de-indexing and we are not talking about erasing the data from the initial database and from the publisher. That, I think, is very important, because it amounts to saying that we can finally erase the path that leads to the library, but we don't touch the library, and we're not going to tear out the pages of the books in the library, to use an image that we understand well.

Basil Ader: We still close the library door, seriously.

Frédéric Gras: Let's say we, we erase the signs, but, at least for those who know where the library is, they can find the information.

The solution which was recently handed down by the European Court of Human Rights is more questionable. Moreover, it has been discussed, and it is the great merit, I think, of the European Court of Human Rights, that it publishes dissenting opinions, and even concurring opinions which shed distinct light on the decision of the European Court of Human Rights, but which, again, is a specific case.

The concurring opinion reminds us of this: Well, we were told that we could anonymize an article, illegally published by a press title twenty years ago, on the pretext that the person who was cited was a doctor, and that it therefore caused him harm in the exercise of his activity to see his name associated with an event which had occurred twenty years previously, and there, in this specific case, and precisely with regard to this specific case, the European judges, in their majority, because it is not a unanimous decision, considered that the decision could be anonymized, that is to say that we did not come to delete the article, but we simply put an X in place of the person's name and they considered that in this context, there was no violation of article 10.

And, besides, this article allows us to return to the anonymization of court decisions because the only ones who do not have the right to the anonymization of court decisions, are the lawyers. . We could imagine that a lawyer who is not satisfied with a court decision which does not flatter him could perfectly well, in view of this case law of the European Court of Human Rights, say, Well, I ask that my name also be erased and that I suffer the same fate as the parties and that I also have the right to forget a decision that is not favorable to me.

Basil Ader: Yes, except that we put the names of the lawyers, but if there are no longer the names of the parties, we no longer know who the lawyers were for.

Frédéric Gras: At the same time, sometimes we manage to find it precisely in certain decisions, we will anonymize the location of the company, but we are not going to anonymize the name of the bar to which the lawyer is attached, and so it allows you to find the city, since often the city corresponds to the city of the case. So, we can clearly see that this anonymization system, which has been auto-automated by a pseudonymization system, is not necessarily satisfactory in its entirety.

Basil Ader: I wanted to ask Ramiro Alvarez Ugarte if today the right to be forgotten has entered a little into the consciences of litigants. Do they claim it as a right a natural right? As, for example, today people are asking for protection of their personal data or their privacy or their image rights. Is it still not confidential enough? People don't know that they can request erasure in any case, the de-indexing of information concerning them, always accessible on search and platform engines.

Ramiro Alvarez Ugarte
This is a very good and important question. I think the short answer is, I don't know. I guess it also depends on what theory of rights we embrace. But, what I would say is that, from a descriptive point of view, this right has really emerged in claims and demands made by people who have felt that they were harmed by something that happens in the world, that has to do with the permanence of information on the Internet.

Most rights have, historically, often come from demands made by people, on the streets, in front of courts. This is usually the way that rights get recognized. I think we are at that moment of creation, in which the claims and demands appear. Some courts are friendly towards right to be forgotten claims, some courts are less friendly. But, I wouldn't be surprised if the right to be forgotten probably ends up being narrowed down to something about the right to have your information being de-indexed. Under certain circumstances, it will be recognized by most courts around the world, and I think this has to do simply with the fact that the world today is very different from the world 40 years ago, that the Internet has changed things materially, and that this produces effects, and the law catches up to those effects.

So, my intuition is that is that the right to be forgotten, or the right to de-indexation, under certain circumstances, will be increasingly recognized by courts and legislatures around the world as an autonomous right that is linked to privacy, that is linked to data protection, but that is separate from them.

Basile Ader: It's separate. Yes, I think so too.

And you think that this must be the work of the legislator? Or should it be left to the discretion of judges on a case-by-case basis?

Ramiro Alvarez Ugarte: I believe legislators should step in and regulate the conditions under which de-indexation should happen. In that sense, I believe that.

In Latin America, even though our constitutional law mainly has been inspired by the United States, our law and our city law has been inspired by French law. And so, we believe in in the supremacy of the legislature as the representative of the people. So, I would say that, yes, that the legislature should intervene. At the same time because it is such a complex issue, the nuance that can be given to the issue by courts deciding, on a case by case basis, will be very helpful for legislators. So, it would make sense to have a lot of case laws, and the legislature learning about those cases, and legislating afterwards

Basile Ader
Okay, I understand, and there is in French law, in terms of personal data, an exception in the law for information of a journalistic nature. There is an exception which means that newspapers can give the name of people as long as it is justified by current events. Do you think there should be, if there is a law on right to be forgotten, an exception for journalistic information?

Ramiro Alvarez Ugarte: I would say so, yes. My intuition is that de-indexation when dealing with media companies, newspapers and journalists generally, should be really limited to cases in which the information is no longer relevant, and where the impact on the availability of the information is as minimum as possible. Probably the way to get the answer, that I believe intuitively is the best answer, is to not start from the perspective of the journalist, but from the perspective of what kind of information is being discussed there. So, if the information is of a public figure, of a politician, of a legislator, or someone who takes part in public debate, that information should be protected from right to be forgotten claims, especially if that person is a public figure, whether, you know, the one who has published the information is someone blogging, or an actual newspaper with an institutional backing. I mean, getting into the issue through the kinds of information being covered, is better than getting into the issue through the point of view of journalists or for newspapers, and so on.

Basil Ader: There's a kind of presumption, as soon as it is a journalist, it’s of general interest.

I think it's time to wrap up Anderson if you want. I give you the floor again to give a word. I can simply say that it is still a new right, and that you are right to be interested in it because in my opinion it will continue to assert itself and become clearer.

Anderson Javiel Dirocie De León: Thank you, Master

Basil Ader: Congratulations for your choice of subject.

Anderson Javiel Dirocie De León: Thank you thank you for being there and for our support. Thank you Master Gras and Professor Alvarez Ugarte for their valuable contributions, as well as to the participants for their questions and, of course, for their commitment. Don't forget that the streaming video will be published on the YouTube in English and French.

I invite you to participate in the next webinar in the series, the third, on March 25 on hate speech, and the fourth, April 2, on freedom of expression in the African human rights system..

Finally, I also invite you to send us your contributions to the database with any type of comments which will be welcome. You can do this via our website.

Thank you.